



## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OGC-2016-0719; FRL-9958-39-OGC]**

### **Proposed Consent Decree, Clean Air Act Citizen Suit**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed consent decree to address a lawsuit filed by the Center for Biological Diversity and the Center for Environmental Health (collectively “Plaintiffs”) in the United States District Court for the Northern District of California: *Center for Biological Diversity, et al. v. McCarthy*, No. 3:16-cv-03796-VC (N.D. Cal.). On July 7, 2016, Plaintiffs filed a complaint in this lawsuit alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), failed to perform nondiscretionary duties under the CAA to complete periodic reviews of the air quality criteria and the primary National Ambient Air Quality Standards (“NAAQS”) for sulfur oxides (“SO<sub>x</sub>”) and the primary NAAQS for oxides of nitrogen (“NO<sub>x</sub>”), to make such revisions to those air quality criteria and NAAQS as may be appropriate, and to promulgate such new NAAQS as may be appropriate. The proposed consent decree would establish deadlines for EPA to take certain, specified actions.

**DATES:** Written comments on the proposed consent decree must be received by [insert date 30 days after publication date].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-

OGC-2016-0719, online at [www.regulations.gov](http://www.regulations.gov). Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). If you would like to submit a comment using a different submission method, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Melina Williams, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3406; fax number: (202) 564-5603; email address: [williams.melina@epa.gov](mailto:williams.melina@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed consent decree.**

Under section 109(d) of the CAA, EPA is required to periodically review air quality criteria and NAAQS and to make such revisions as may be appropriate. The

proposed consent decree addresses a lawsuit filed by Plaintiffs alleging that EPA failed to timely complete certain periodic reviews for NO<sub>x</sub> and SO<sub>x</sub> by the deadline set forth in the CAA. The proposed consent decree would establish deadlines for EPA to take certain, specified actions in the periodic reviews, and if appropriate, revisions of the air quality criteria addressing human health effects of SO<sub>x</sub>, and the primary NAAQS for NO<sub>x</sub> and SO<sub>x</sub>. Under the terms of the proposed consent decree, EPA would: (1) sign a notice setting forth its proposed decision concerning its review of the primary NAAQS for NO<sub>x</sub> no later than July 14, 2017; (2) sign a notice setting forth its final decision concerning its review of the primary NAAQS for NO<sub>x</sub> no later than April 6, 2018; (3) issue a final Integrated Science Assessment (a document containing air quality criteria) addressing human health effects of SO<sub>x</sub> no later than December 14, 2017; (4) sign a notice setting forth its proposed decision concerning its review of the primary NAAQS for SO<sub>x</sub> no later than May 25, 2018; and (5) sign a notice setting forth its final decision concerning its review of the primary NAAQS for SO<sub>x</sub> no later than January 28, 2019. See the proposed consent decree for additional details.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree

should be withdrawn, the terms of the decree will be affirmed.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How can I get a copy of the proposed consent decree?*

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2016-0719) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in

the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA

electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: January 6, 2017.

Lorie J. Schmidt

Associate General Counsel

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